

ESCROW AGREEMENT
FOR
BID DOCUMENTS

THIS AGREEMENT is made and entered into this ____ day of January, 2001, by and among the Department of Transportation, an agency of the State of North Carolina, hereinafter called the "DEPARTMENT"; Rea Construction Company, hereinafter called the "CONTRACTOR"; and First Citizens Bank, hereinafter called the "ESCROW AGENT".

WHEREAS, the DEPARTMENT awarded a project on January 5, 2001, based on a bid proposal submitted by the CONTRACTOR, hereinafter called the "CONTRACT", for the construction of Project Number 8.1631501 (I-2511CA), Rowan County, North Carolina, hereinafter called the "PROJECT", pursuant to which the CONTRACTOR shall cause the work therein to be constructed; and

WHEREAS, the DEPARTMENT and CONTRACTOR are desirous of entering into an Escrow Agreement to provide for specific contingencies governing the escrow and control of the sealed container bearing the CONTRACTOR'S name and address and project number which contains CONTRACT bid documentation and a signed affidavit listing each bid document; hereinafter called "BID DOCUMENTS"; and

WHEREAS the DEPARTMENT and CONTRACTOR desire the ESCROW AGENT to hold the BID DOCUMENTS of the CONTRACTOR;

NOW THEREFORE, for and in consideration of the mutual covenants contained herein, it is agreed by and between the parties hereto that:

ARTICLE I.
ESCROW BID DOCUMENTATION

The parties hereto agree to the establishment of Escrow of the BID DOCUMENTS for the CONTRACT pursuant to the DEPARTMENT'S 1995 Standard Specifications, Standard Special Provisions, and Project Special Provisions pertaining to construction under the contract. It is the understanding of the parties hereto that the DEPARTMENT shall pay the ESCROW AGENT, as determined by separate agreement, for the escrow of the BID DOCUMENTS submitted to the ESCROW AGENT under the terms of this Agreement.

ARTICLE II.
ACKNOWLEDGMENT

By its signature below, the ESCROW AGENT hereby acknowledges receipt from the DEPARTMENT and CONTRACTOR of a sealed container bearing the CONTRACTOR'S name, CONTRACTOR'S address, the date of submittal, PROJECT Number, and the County and containing as specified by the affidavit of the CONTRACTOR the BID DOCUMENTS for the aforementioned PROJECT.

ARTICLE III.
DEPOSIT OF BID DOCUMENTS

The BID DOCUMENTS shall remain on deposit with the ESCROW AGENT until those conditions of release, as specified in ARTICLE IV, RELEASE FROM ESCROW, are met. As long as the BID DOCUMENTS remain in escrow with the ESCROW AGENT, the ESCROW AGENT shall not allow any person access, to gain possession, or to in any way interfere with the sealed BID DOCUMENT container.

ARTICLE IV.
RELEASE FROM ESCROW

Upon being presented with a letter of authorization from the DEPARTMENT, the ESCROW AGENT shall deliver to the CONTRACTOR the sealed BID DOCUMENTS container.

The ESCROW AGENT is authorized to release the sealed BID DOCUMENTS container to the DEPARTMENT with the CONTRACTOR'S signed consent.

The ESCROW AGENT is also authorized to release the sealed BID DOCUMENTS container to the DEPARTMENT without the CONTRACTOR'S signed consent subject to the following conditions:

1. The CONTRACTOR has provided written notification to the DEPARTMENT of the CONTRACTOR'S intention to file a claim related to the CONTRACT for the PROJECT; or
2. The CONTRACTOR has submitted a written claim to the DEPARTMENT relating to the CONTRACT for the PROJECT; or
3. The CONTRACTOR has submitted a written and verified claim to the DEPARTMENT relating to the CONTRACT for the PROJECT; or
4. The CONTRACTOR has initiated litigation against the DEPARTMENT relating to the CONTRACT for the PROJECT.

Prior to any release from escrow to the DEPARTMENT, the ESCROW AGENT shall verify that either condition of release to the DEPARTMENT, as stated above, has been met by providing written notice to the CONTRACTOR of the ESCROW AGENT'S intention to release the BID DOCUMENTS to the DEPARTMENT. Such written notice from the ESCROW AGENT shall be sent by certified mail no less than thirty (30) calendar days prior to release to the DEPARTMENT. Upon any release from escrow of the BID DOCUMENT container, the ESCROW AGENT shall cause the execution of Exhibit A, Escrow Release for BID DOCUMENTS, as attached hereto and incorporated herein as if fully contained, by the party receiving the sealed BID DOCUMENTS container.

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ARTICLE V.
INDEMNITY

The CONTRACTOR agrees to indemnify and hold the ESCROW AGENT harmless against any loss, claim, damage, liability or expenses incurred in connection with any action, suit, proceeding, claim or alleged liability arising from this Escrow Agreement, provided, however, that the ESCROW AGENT shall not be so indemnified or held harmless for its negligence or acts of bad faith by it or any of its agents or employees.

ARTICLE VI.
NOTICES

All notices and other communication shall be in writing and shall be deemed to have been duly given and delivered if mailed by certified mail, return receipt requested, postage prepaid to the addresses stated herein:

DEPARTMENT:

North Carolina Department of Transportation
1 South Wilmington Street
P. O. Box 25201
Raleigh, North Carolina 27611

CONTRACTOR: Rea Construction Company
Box 32487
Charlotte, NC 28232

ESCROW AGENT: First Citizens Bank
Corporate Trust
P.O. Box 29522
Raleigh, NC 27626-0522

ARTICLE VII.
DUTIES OF ESCROW AGENT

The duties and responsibilities of the ESCROW AGENT shall be limited to those expressly set forth herein and the ESCROW AGENT shall act only in accordance with this Escrow Agreement. Notwithstanding specific provisions hereunder, the ESCROW AGENT shall at all times act upon and in accordance with the joint written instructions of the DEPARTMENT and CONTRACTOR.

ARTICLE VIII.
LAWS

This Escrow Agreement shall be deemed to have been executed in Wake County, North Carolina, and the laws of the State of North Carolina shall apply.

ARTICLE IX.
ASSIGNMENT

This Escrow Agreement shall not be assigned without the written consent of all the parties hereto.

ARTICLE X.
SURVIVAL OF CONTRACT

Except as may be expressly modified, all terms and conditions of this Escrow Agreement remain in full force and effect. The establishment of this Escrow Agreement is limited solely by the contingency of release of the BID DOCUMENTS by the CONTRACTOR to the DEPARTMENT, as established by ARTICLE IV, RELEASE FROM ESCROW. Nothing contained herein shall alter the rights of the parties hereto.

The covenants herein contained shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereunto set their hands and seals the day above first written.

CONTRACTOR:

ESCROW AGENT:

BY: _____ (Seal)
TITLE: _____

BY: _____ (Seal)
TITLE: _____

WITNESS

WITNESS

DEPARTMENT OF TRANSPORTATION:

BY: _____ (Seal)
TITLE: _____

WITNESS